

Message Text

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TAGS: ETRD, FI, US, GATT

SUBJECT:CUSTOMS TREATMENT OF PAPER-MAKING MACHINERY

REFS: (A) HELSINKI 1234, (B) STATE 142862

1. FINNISH CHARGE HELLQVIST CALLED ON TREASURY UNDER SECRETARY ANDERSON JUNE 20 TO PRESENT COPY OF AIDE MEMOIRE DISCUSSED REFTEL. HELLQVIST STRESSED THIS ISSUE IS QTE VERY IMPORTANT UNQTE TO FINLAND. ANDERSON AND CUSTOMS OFFICER PRESENT PROMISED TO INVESTIGATE IMMEDIATELY AND TO NOTIFY FINNS ASAP AS TO WHAT MIGHT BE DONE.

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2. AT ISSUE IS QUESTION OF WHETHER COMPONENTS OF A SINGLE PAPER-MAKING MACHINE CAN BE TREATED AS AN QTE ENTIRETY UNQTE, THAT IS, AS A SINGLE SHIPMENT FOR TARIFF PURPOSES, EVEN THOUGH THEY MUST BE IMPORTED IN SEPARATE SHIPMENTS DUE TO MACHINE'S SIZE. (FINNISH AIDE MEMOIRE CORRECTLY POINTS OUT THAT SUCH A MACHINE CAN EASILY BE 500 FEET LONG AND WEIGH 4000 TONS.)

PAPER-MAKING MACHINERY IS PROVIDED FOR IN ITEM 668.00 OF TARIFF SCHEDULES OF THE U.S. (TSUS), DUTIABLE AT 3.5 PERCENT AD VALOREM.

3. U.S. COURT DECISIONS UNIFORMLY HAVE HELD THAT SEPARATE SHIPMENTS CANNOT RPT NOT CONSTITUTE ENTIRETIES FOR CUSTOMS PURPOSES. FURTHER, THE TREATMENT OF PARTS WAS CHANGED IN 1963, BY PROMULGATION OF THE TSUS, FROM THE MANNER IN WHICH PARTS FOR MACHINERY HAD BEEN TREATED UNDER FORMER (SMOOT-HAWLEY) TARIFF LAW. PREVIOUS LAW HAD MADE QTE PARTS UNQTE DUTIABLE AT SAME RATE AS THE WHOLE MACHINE, REGARDLESS OF WHETHER THEY APPEARED TO BE CLASSIFIABLE UNDER SEPARATE PROVISIONS. TSUS, HOWEVER, REVERSED THAT TREATMENT AND PROVIDED THAT IF AN ARTICLE IS SPECIFICALLY ENUMERATED IN THE TARIFF SCHEDULE IT WILL BE CLASSIFIED AND DUTIABLE UNDER THE SPECIFIC PROVISION RATHER THAN UNDER A PROVISION FOR PARTS, REGARDLESS OF WHETHER IT IS TO BE INCORPORATED IN A WHOLE MACHINE. THUS IN THE 1974 MILWAUKEE CASE, FINNISH-MADE DRYERS SPECIFICALLY DESIGNED FOR DRYING PAPER AND SOLELY USED AS PART OF A PAPER-MAKING MACHINE WOULD NEVERTHELESS BE CLASSIFIED AS QTE DRYERS UNQTE UNDER ITEM 661.70 WITH DUTY AT 6 PERCENT AD VALOREM (NOT 7 PERCENT AS IN AIDE MEMOIRE), RATHER THAN UNDER THE PROVISION FOR PAPER-MAKING MACHINERY DUTIABLE AT 3.5 PERCENT.

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4. NOTWITHSTANDING EXISTING CASE LAW DEALING WITH THE QTE ENTIRETY UNQTE PRINCIPLE, AND NEW TREATMENT OF QTE PARTS UNQTE MANDATED BY TSUS, COMMISSIONER OF CUSTOMS IN 1966 ISSUED A LETTER DIRECTING THAT SEPARATE SHIPMENTS OF COMPONENTS FOR PAPER-MAKING MACHINERY COULD BE CLASSIFIED AS ENTIRETIES.

5. IN 1971, THE ISSUE AGAIN WAS PRESENTED TO CUSTOMS SERVICE FOR CONSIDERATION. TO ALIGN THE 1966 RULING MORE CLOSELY WITH ESTABLISHED CASE LAW AND TO AMELIORATE THE TRADE EFFECTS OF CHANGED TREATMENT OF PARTS UNDER THE TSUS, CUSTOMS RULED THAT A SINGLE SHIPMENT OF PARTS, REGARDLESS OF WHETHER ANY OF THEM WERE SPECIFICALLY PROVIDED FOR IN THE TSUS, COULD BE TREATED AS AN ENTIRETY AND CLASSIFIED UNDER THE PROVISION FOR PARTS OF PAPERMAKING MACHINERY IF THE SHIPMENT CONSIDERED AS A WHOLE DID NOT CONSTITUTE AN ARTICLE SEPARATELY PROVIDED FOR.

6. THIS ATTEMPT AT COMPROMISE WAS OVERTURNED BY A 1972 DECISION OF THE COURT OF CUSTOMS AND PATENT APPEALS.

THE DECISION HELD THAT TWO SEPARATE SHIPMENTS OF WELDING APPARATUS COULD NOT BE TREATED AS A SINGLE ENTITY FOR CUSTOMS PURPOSES. IT FURTHER HELD THAT ONE OF THESE SHIPMENTS, CONSISTING OF FIVE SUBASSEMBLIES, COULD NOT EVEN BE CLASSIFIED AND DUTIABLE AS AN ENTITY IN ITSELF BECAUSE A CRUCIAL COMPONENT NECESSARY FOR OPERATION WAS CONTAINED IN THE OTHER SHIPMENT. CCPA BASED THIS DECISION ON THE DOCTRINE OF ENTIRETIES. U.S. CUSTOMS CONCLUDED IN 1976 THAT THIS DECISION OVERRULED THEIR 1971 POSITION WITH RESPECT TO PARTS OF PAPER-MAKING MACHINES.

7. IT HAS BEEN CONTENDED THAT QTE AN ESTABLISHED AND UNIFORM PRACTICE UNQTE EXISTS UNDER WHICH SHIPMENTS IN QUESTION ARE TREATED AS ENTIRETIES DUTIABLE AT THE 3.5 LIMITED OFFICIAL USE

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PERCENT RATE, AND THAT TO IMPOSE A HIGHER TARIFF WITHOUT NOTICE WOULD BE CONTRARY TO CUSTOMS REGULATIONS AND LAW. WHETHER THERE IS IN FACT SUCH A PRACTICE MUST BE ESTABLISHED BY COLLECTING DATA FROM VARIOUS PORTS OF ENTRY, AND THIS IS BEING DONE ON A PRIORITY BASIS. TIME REQUIRED PROBABLY WILL BE ABOUT THREE OR FOUR WEEKS. IN ANY CASE, A FINDING THAT SUCH A PRACTICE EXISTS MAY ONLY DELAY CHANGE IN CLASSIFICATION FOR THE NINETY DAYS REQUIRED FOR PUBLIC NOTICE AND HEARINGS, BUT WOULD NOT NECESSARILY RESULT IN CONFIRMATION OF THE 1966 AND 1971 CUSTOMS RULINGS.

8. IMPORTERS OF PAPER MAKING MACHINERY ALSO HAVE ASKED THAT ANY REVOCATION OF 1971 RULINGS NOT BE APPLIED TO SHIPMENTS MADE BEFORE DATE OF REVOCATION. THIS ISSUE IS MORE COMPLEX SINCE IT INVOLVES A QUESTION OF LAW RATHER THAN FACT. CUSTOMS ALSO IS ATTEMPTING TO RESOLVE IT.

9. COMMENT: IN MEETING WITH UNDER SECRETARY ANDERSON, CHARGE HELLQVIST WAS INFORMED ORALLY OF SUBSTANCE OF ABOVE EXCEPT FOR BACKGROUND CONCERNING LEGAL STATUS OF 1966 AND 1971 RULINGS. WE ARE UNABLE TO SAY HOW WELL HE UNDERSTOOD AFTER THIS BRIEF MEETING THAT IRRESPECTIVE OF KENNEDY ROUND UNDERSTANDING PROSPECTS FOR MAINTAINING 3.5 PERCENT DUTY RATE ON SUBJECT SHIPMENTS LOOK POOR TO SAY THE LEAST. EMBASSY MAY DRAW ON SUBSTANCE THIS MESSAGE TO MAKE CLEAR TO FINNS THAT THEIR INTERESTS WILL BE GIVEN EVERY SYMPATHETIC CONSIDERATION BUT THAT THERE MAY BE TIGHT LEGAL CONSTRAINTS ON WASHINGTON'S OPTIONS. VANCE

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